

ASSEMBLY BILL

No. 1102

Introduced by Assembly Member Rodriguez

February 17, 2017

An act to amend Section 1278.5 of the Health and Safety Code, relating to health facilities.

LEGISLATIVE COUNSEL'S DIGEST

AB 1102, as introduced, Rodriguez. Health facilities: whistleblower protections.

Existing law requires the State Department of Public Health to adopt regulations that establish minimum, specific, and numerical licensed nurse-to-patient ratios by licensed nurse classification and by hospital unit, as defined, for all licensed health facilities, as specified. Existing law requires additional staff to be assigned in accordance with a documented patient classification system for determining nursing care requirements, as specified. Existing law prohibits a registered nurse from being assigned to a nursing unit or clinical area unless that nurse has first received sufficient orientation in that clinical area and has demonstrated current competence, as specified.

Existing law provides for the licensure and regulation of health facilities, as defined, by the department. Existing law prohibits a health facility from discriminating or retaliating against a patient, employee, member of the medical staff, or any other health care worker of the health facility because that person has presented a grievance, complaint, or report to the facility, as specified, or has initiated, participated, or cooperated in an investigation or administrative proceeding related to the quality of care, services, or conditions at the facility, as specified. Existing law makes a person who willfully violates those provisions

guilty of a misdemeanor and makes a violation of those provisions subject to a civil penalty.

This bill would additionally prohibit a health facility from discriminating or retaliating against any of the above-described persons because that person has refused an assignment or change in assignment on the basis that it would violate requirements set forth pursuant to regulations adopted under the provisions described above relating to nursing. By expanding the scope of a crime, this bill would impose a state-mandated local program. The bill would also make technical, nonsubstantive changes to those provisions.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. Section 1278.5 of the Health and Safety Code is
2 amended to read:

3 1278.5. (a) The Legislature finds and declares that it is the
4 public policy of the State of California to encourage patients,
5 nurses, members of the medical staff, and other health care workers
6 to notify government entities of suspected unsafe patient care and
7 conditions. The Legislature encourages this reporting in order to
8 protect patients and in order to assist those accreditation and
9 government entities charged with ensuring that health care is safe.
10 The Legislature finds and declares that whistleblower protections
11 apply primarily to issues relating to the care, services, and
12 conditions of a facility and are not intended to conflict with existing
13 provisions in state and federal law relating to employee and
14 employer relations.

15 (b) (1) No health facility shall discriminate or retaliate, in any
16 manner, against any patient, employee, member of the medical
17 staff, or any other health care worker of the health facility because
18 that person has done ~~either~~ any of the following:

19 (A) Presented a grievance, complaint, or report to the facility,
20 to an entity or agency responsible for accrediting or evaluating the

1 facility, or the medical staff of the facility, or to any other
2 governmental entity.

3 (B) Has initiated, participated, or cooperated in an investigation
4 or administrative proceeding related to, to the quality of care,
5 services, or conditions at the facility that is carried out by an entity
6 or agency responsible for accrediting or evaluating the facility or
7 its medical staff, or governmental entity.

8 (C) *Has refused an assignment or change in assignment on the*
9 *basis that it would violate requirements set forth pursuant to*
10 *regulations adopted under Section 1276.4, including any*
11 *requirements related to nurse assignments.*

12 (2) No entity that owns or operates a health facility, or ~~which~~
13 *that* owns or operates any other health facility, shall discriminate
14 or retaliate against any person because that person has taken any
15 actions pursuant to this subdivision.

16 (3) A violation of this section shall be subject to a civil penalty
17 of not more than twenty-five thousand dollars (\$25,000). The civil
18 penalty shall be assessed and recovered through the same
19 administrative process set forth in Chapter 2.4 (commencing with
20 Section 1417) for long-term health care facilities.

21 (c) Any type of discriminatory treatment of a patient by whom,
22 or upon whose behalf, a grievance or complaint has been submitted,
23 directly or indirectly, to a governmental entity or received by a
24 health facility administrator within 180 days of the filing of the
25 grievance or complaint, shall raise a rebuttable presumption that
26 the action was taken by the health facility in retaliation for the
27 filing of the grievance or complaint.

28 (d) (1) There shall be a rebuttable presumption that
29 discriminatory action was taken by the health facility, or by the
30 entity that owns or operates that health facility, or that owns or
31 operates any other health facility, in retaliation against an
32 employee, member of the medical staff, or any other health care
33 worker of the facility, if responsible staff at the facility or the entity
34 that owns or operates the facility had knowledge of the actions,
35 participation, or cooperation of the person responsible for any acts
36 described in paragraph (1) of subdivision (b), and the
37 discriminatory action occurs within 120 days of the filing of the
38 grievance or complaint by the employee, member of the medical
39 staff or any other health care worker of the facility.

(2) For purposes of this section, discriminatory treatment of an employee, member of the medical staff, or any other health care worker includes, but is not limited to, discharge, demotion, suspension, or any unfavorable changes in, or breach of, the terms or conditions of a contract, employment, or privileges of the employee, member of the medical staff, or any other health care worker of the health care facility, or the threat of any of these actions.

(e) The presumptions in subdivisions (c) and (d) shall be presumptions affecting the burden of producing evidence as provided in Section 603 of the Evidence Code.

(f) Any person who willfully violates this section is guilty of a misdemeanor punishable by a fine of not more than twenty thousand dollars (\$20,000).

(g) An employee who has been discriminated against in employment pursuant to this section shall be entitled to reinstatement, reimbursement for lost wages and work benefits caused by the acts of the employer, and the legal costs associated with pursuing the case, or to any remedy deemed warranted by the court pursuant to this chapter or any other applicable provision of statutory or common law. A health care worker who has been discriminated against pursuant to this section shall be entitled to reimbursement for lost income and the legal costs associated with pursuing the case, or to any remedy deemed warranted by the court pursuant to this chapter or other applicable provision of statutory or common law. A member of the medical staff who has been discriminated against pursuant to this section shall be entitled to reinstatement, reimbursement for lost income resulting from any change in the terms or conditions of his or her privileges caused by the acts of the facility or the entity that owns or operates a health facility or any other health facility that is owned or operated by that entity, and the legal costs associated with pursuing the case, or to any remedy deemed warranted by the court pursuant to this chapter or any other applicable provision of statutory or common law.

(h) The medical staff of the health facility may petition the court for an injunction to protect a peer review committee from being required to comply with evidentiary demands on a pending peer review hearing from the member of the medical staff who has filed an action pursuant to this section, if the evidentiary demands from

1 the complainant would impede the peer review process or endanger
2 the health and safety of patients of the health facility during the
3 peer review process. Prior to granting an injunction, the court shall
4 conduct an in camera review of the evidence sought to be
5 discovered to determine if a peer review hearing, as authorized in
6 Section 805 and Sections 809 to 809.5, inclusive, of the Business
7 and Professions Code, would be impeded. If it is determined that
8 the peer review hearing will be impeded, the injunction shall be
9 granted until the peer review hearing is completed. Nothing in this
10 section shall preclude the court, on motion of its own or by a party,
11 from issuing an injunction or other order under this subdivision in
12 the interest of justice for the duration of the peer review process
13 to protect the person from irreparable harm.

14 (i) For purposes of this section, “health facility” means any
15 facility defined under this chapter, including, but not limited to,
16 the facility’s administrative personnel, employees, boards, and
17 committees of the board, and medical staff.

18 (j) This section shall not apply to an inmate of a correctional
19 facility or juvenile facility of the Department of Corrections and
20 Rehabilitation, or to an inmate housed in a local detention facility
21 including a county jail or a juvenile hall, juvenile camp, or other
22 juvenile detention facility.

23 (k) This section shall not apply to a health facility that is a
24 long-term health care facility, as defined in Section 1418. A health
25 facility that is a long-term health care facility shall remain subject
26 to Section 1432.

27 (l) Nothing in this section shall be construed to limit the ability
28 of the medical staff to carry out its legitimate peer review activities
29 in accordance with Sections 809 to 809.5, inclusive, of the Business
30 and Professions Code.

31 (m) Nothing in this section abrogates or limits any other theory
32 of liability or remedy otherwise available at law.

33 SEC. 2. No reimbursement is required by this act pursuant to
34 Section 6 of Article XIII B of the California Constitution because
35 the only costs that may be incurred by a local agency or school
36 district will be incurred because this act creates a new crime or
37 infraction, eliminates a crime or infraction, or changes the penalty
38 for a crime or infraction, within the meaning of Section 17556 of
39 the Government Code, or changes the definition of a crime within

- 1 the meaning of Section 6 of Article XIII B of the California
- 2 Constitution.

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